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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MICHAEL EPSTEIN

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Appeal 2008-005210  
Application 09/894,391  
Technology Center 2400

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Decided: January 15, 2010

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*Before* LANCE LEONARD BARRY, STEPHEN C. SIU, and DEBRA K.  
STEPHENS, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) (2002) from a final rejection of claims 4-10. Claims 1-3 and 11-13 were canceled. (Br. 2). We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We AFFIRM.

## STATEMENT OF THE CASE

### *Introduction*

According to Appellant, the invention relates to “protecting data from illicit copying from a remote location” (Spec. 1, ll. 5-6).

### *Exemplary Claim(s)*

Claim 4 is an exemplary claim and is reproduced below:

4. A security system comprising:

a verifier for determining an authorization to process protected material, based on one or more responses to one or more requests; and

a timer for measuring response times associated with the one or more responses to the one or more requests,

wherein

the verifier determines the authorization based at least in part on an assessment of the response times, and wherein

the response times are correlated to a physical proximity between the verifier and a first source of the one or more requests, and between the verifier and a second source of the one or more responses.

### *Prior Art*

Hershey	4,924,378	May 8, 1990
Fischer	5,659,617	Aug. 19, 1997
Dillenberger	2002/0069281 A1	Jun. 6, 2002
Candelore	2002/0154777 A1	Oct. 24, 2002

van Zoest	6,496,802 B1	Dec. 17, 2002
Serret-Avila	6,785,815 B1	Aug. 31, 2004
Honda	6,910,221 B1	Jun. 21, 2005
Vered	6,954,786 B1	Oct. 11, 2005

### *Rejections*

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Candelore, Honda and Fischer.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Candelore, Honda, Fischer, and Dillenberger.

Claims 7 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Serret-Avila, Honda, and Hershey.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hershey and Fischer.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Serret-Avila, Honda, Hershey and Vered.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Serret-Avila, Honda, Hershey and van Zoest.<sup>1</sup>

### GROUPING OF CLAIMS

(1) Appellant argues claim 4 individually (*see* Br. 9-11). We therefore treat claim 4 individually.

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<sup>1</sup> Appellant appears to have inadvertently omitted the rejections of claims 8 and 10 from the Grounds of Rejection To Be Reviewed on Appeal in their Appeal Brief filed Oct. 26, 2007 (*see* Br. 8). However, Appellant addresses these claims in their Argument and thus, we consider these claims to be appealed (*see* Br. 8 and 15).

(2) Appellant argues claim 5 individually (*see* Br. 11-12). We therefore treat claim 5 individually.

(3) Appellant argues claims 7-10 as a group based on representative claim 7 (*see* Br. 12-15). We therefore treat claims 8, 9, and 10 as standing or falling with representative and independent claim 7.

(4) Appellant argues claim 6 on the same basis as claims 4 and 5 (*id.* at 16). However, we address claim 6 separately.

We accept Appellant's grouping of the claims. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2008).

## ISSUE 1

### *35 U.S.C. § 103(a): claim 4*

Appellant asserts the invention is not obvious over Candalore, Honda and Fischer (Br. 10). Specifically, Appellant contends Honda does not teach a timer for measuring response times associated with the one or more requests but instead, “merely describes a response time measurement section 50 that measures the response time between a moving image request” (*id.*). Further, Appellant contends Fischer merely describes (1) providing location certificates and (2) a location certification unit (LCU) that includes a position determination unit (PDU) that has a conventional positioning determining apparatus for receiving Loran and/or GPS signals and computing its position (*id.*). According to Appellant, Fischer does not teach response times being correlated to a physical proximity between a verifier and a first request source and between the verifier and a second request source as recited in claim 4.

The Examiner finds Honda clearly discloses a time measurement unit, which reads on the "timer" as claimed, that is used to measure one or more responses to one or more request (Ans. 14). Further, the Examiner finds "[t]he feature of 'the response times are correlated to a physical proximity between the verifier and a first source of the one or more requests, and between the verifier and second source of the one or more request' is not recited in the rejected claim(s)" (*id.* at 15). However, the Examiner points to Fischer as disclosing this feature, if the limitation argued by Appellant was in the claim (*id.*).

*Issue 1A:* Has Appellant shown the Examiner erred in finding Honda teaches a timer for measuring response times associated with the one or more requests?

*Issue 1B:* Has Appellant shown the Examiner erred in finding Fischer teaches response times that are correlated to a physical proximity between the verifier and a first source of the one or more requests, and between the verifier and a second source of the one or more requests?

## PRINCIPLES OF LAW

### *Obviousness*

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

If the Examiner's burden is met, the burden then shifts to the Appellant to overcome the *prima facie* case with argument and/or evidence.

Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

### ANALYSIS

In our review, we find that the Examiner has made specific findings, with respect to claim 4 (Ans. 4). Appellant first argues Candelore does not teach or suggest the specific limitations; however, the Examiner did not cite Candelore for teaching these limitations. Appellant then restates elements of the claim language and discusses the teachings of Honda and Fischer but fails to respond to the specifics of the Examiner's rejection (*see* Br. 9-11; and Ans. 3-5).

However, Appellant does not present any arguments or evidence to show error in the Examiner's specific fact finding regarding Candelore, Honda, and Fischer. We note that a statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. *See* 37 C.F.R. § 41.37(c)(1)(vii). Moreover, Appellant has failed to comply with the requirements of 37 C.F.R. § 1.111(b) (2000) by merely reciting the language of the claim and asserting that such language is not taught by the reference. Therefore, we find Appellant has not met the burden of coming forward with evidence or argument to overcome the Examiner's findings that (1) Honda teaches a timer for measuring response times associated with the one or more requests and (2) Fischer teaches response times that are correlated to a physical proximity between the verifier and a first source of the one or more requests, and between the verifier and a second source of the one or more requests (Ans. 4-5).

Accordingly, we sustain the Examiner's conclusion of obviousness with respect to claim 4.

## ISSUE 2

### *35 U.S.C. § 103(a): claim 5*

The Examiner rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Candelore, Honda, Fischer, and Dillenberger (Ans. 5). Appellant argues that none of these references, taken alone or in combination, teaches “the verifier determines the authorization based at least in part on an assessment of the response times, and wherein the assessment of the response times forms an assessment of whether the one or more responses were communicated locally to the verifier or via a network connection” (Br. 11-12).

The Examiner finds Candelore teaches comparing/checking a time generated by a GPS receiver that has a secure time source and using this result to verify validities of content player locations (Ans. 5). The Examiner further finds Honda discloses a time measurement unit that measures times between responses; Fischer discloses permitting sensitive devices to only operate at specified locations; and Dillenberger discloses generating performance metrics (an assessment) including response times to control cooperation between network computers (Ans. 6-7).

*Issue 2:* Has Appellant shown the Examiner erred in finding the combination of Candelore, Honda, Fischer, and Dillenberger teaches the verifier determines the authorization based at least in part on an assessment of the response times, and wherein the assessment of the response times



forms an assessment of whether the one or more responses were communicated locally to the verifier or via a network connection?

## ANALYSIS

In our review, we find that the Examiner has made extensive fact finding with respect to each of the limitations of claim 5 (*see* Ans. 15-17). Appellant's argument with regard to claim 5 merely restates elements of the claim language<sup>2</sup> and simply argues that the elements are missing from the reference (*see* Br. 11-12 and 16). However, we again find Appellant has not responded to the Examiner's explicit fact finding. We note that again Appellant has failed to comply with the requirements of 37 C.F.R. § 1.111(b) (2000).

Therefore, we conclude Appellant has not met the burden of presenting evidence or argument to rebut the Examiner's conclusion of obviousness based on Candelore, Honda, Fischer, and Dillenberger with respect to claim 5. Accordingly, we sustain the Examiner's conclusion of obviousness with respect to independent claim 5.

## ISSUE 3

### *35 U.S.C. § 103(a): claims 7-10*

Appellant asserts their invention is not obvious over Serret-Avila, Honda and Hershey because "the signature verification engine of Serret-Avila does not preclude 'the rendering corresponding to the selected data

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<sup>2</sup> A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim (*see* 37 C.F.R. § 41.37(c)(1)(vii) (2008)).

item in dependence upon whether other data items of the plurality of data items are available to the renderer” (Br. 14). Appellant concedes Serret-Avila includes a form of verifier (i.e., the signature verification engine) (*id.*). However, Appellant contends the signature verification engine of Serret-Avila checks whether the selected data set includes the digital signature (*id.* at 15). Further, Appellant argues dependent claims 8, 9, and 10 for the same reasons presented for independent claim 7 (*see id.*).

The Examiner finds “Serret-Avila discloses a system for managing the uses of electronic data that are stored in CD, DVD, the Internet, or other source” (Ans. 19). Further, the Examiner concludes that “[i]n Serret-Avila's system, a block of the electronic data is prohibited from rendering in responsive un-authorization access detection” (*id.*).

*Issue 3:* Has Appellant shown the Examiner erred in concluding the combination of Serret-Avila, Honda and Hershey teaches or suggests a verifier that precludes the rendering corresponding to the selected data item in dependence upon whether other data items of the plurality of data items are available to the renderer?

## ANALYSIS

We find that the Examiner has made specific findings with respect to claim 7 (Ans. 19). Appellant's argument with regard to claim 7 merely restates elements of the claim language<sup>3</sup> without providing any arguments except for “Serret Avila checks whether the selected data set includes the

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<sup>3</sup> A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim (*see* 37 C.F.R. § 41.37(c)(1)(vii) (2008)).

digital signature” (Br. 15). However, this is a broad statement without any specific argument or evidence as to why the signature verification engine does not preclude the recited rendering. Appellant has not responded to the Examiner’s explicit fact finding. We thus find Appellant has failed to comply with the requirements of 37 C.F.R. § 1.111(b). Therefore, we conclude Appellant has not met the burden of presenting evidence or argument to rebut the Examiner’s explicit fact findings regarding the teachings of Serret-Avila, Honda, and Hershey.

Accordingly, we sustain the Examiner’s conclusion of obviousness with respect to claim 7. Claim 9 which depends from claim 7 and was argued on the same basis, thus falls with claim 7. Neither claim 8, rejected as being unpatentable over Serret-Avila, Honda, Hershey and Vered, nor claim 10, rejected under 35 U.S.C. § 103(a) as being unpatentable over Serret-Avila, Honda, Hershey and van Zoest, were argued independently but instead were argued on the basis of claim 7 from which they depend. Therefore, claims 8 and 10 fall with claim 7.

#### ISSUE 4

##### *35 U.S.C. § 103(a): claim 6*

The Examiner rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Hershey and Fischer. Appellant argues none of these references, taken alone or in combination, teaches “the verifier determines the authorization based at least in part on an assessment of the response times, and wherein the assessment of whether the one or more responses were immediately available, or whether the one or more responses were a result of a determination” (Br. 16).

The Examiner finds Fischer discloses a secure authorization unit (verifier) that determines beacons/sensitive devices authorizations for specific locations using synchronized communication between secure clocks to correlate response times to positions of the devices (Ans. 21).

*Issue 4:* Has Appellant shown the Examiner erred in finding the combination of Honda and Fischer teaches “the verifier determines the authorization based at least in part on an assessment of whether the one or more responses were immediately available, or whether the one or more responses were a result of a determination”?

#### ANALYSIS

Again, we find that the Examiner has made extensive fact finding with respect to each of the limitations of claim 6 (*see* Ans. 20-21). Appellant's argument with regard to claim 6 is based on the reasons set forth for claims 4 and 5. As discussed above with respect to claims 4 and 5, we find Appellant has failed to comply with the requirements of 37 C.F.R. § 1.111(b) (2000).

Therefore, we conclude Appellant has not met the burden of presenting evidence or argument to rebut the Examiner's conclusion of the obviousness of the invention recited over Hershey and Fischer. Accordingly, we sustain the Examiner's conclusion of obviousness with respect to independent claim 6.

#### CONCLUSION

Appellant has not shown the Examiner erred in finding Honda teaches a timer for measuring response times associated with the one or more requests or that Fischer teaches response times that are correlated to a

physical proximity between the verifier and a first source of the one or more requests, and between the verifier and a second source of the one or more requests. Therefore, Appellant has not shown the Examiner erred in rejecting claim 4 under 35 U.S.C. § 103(a) as obvious over Candelore, Honda and Fischer.

Additionally, Appellant has not shown the Examiner erred in finding the combination of Candelore, Honda, Fischer, and Dillenberger teaches the verifier determines the authorization based at least in part on an assessment of the response times, and wherein the assessment of the response times forms an assessment of whether the one or more responses were communicated locally to the verifier or via a network connection. Therefore, Appellant has not met the burden of showing the Examiner erred in rejecting claim 5 under 35 U.S.C. § 103(a) as obvious over Candelore, Honda, Fischer, and Dillenberger.

Further, Appellant has not shown the Examiner erred in concluding the combination of Serret-Avila, Honda and Hershey teaches or suggests a verifier that precludes the rendering corresponding to the selected data item in dependence upon whether other data items of the plurality of data items are available to the renderer. Therefore, Appellant has not shown the Examiner erred in rejecting claim 7 (and claims 8, 9 and 10 which depend therefrom) under 35 U.S.C. § 103(a) as obvious over Serret-Avila, Honda, and Hershey.

Also, Appellant has not shown the Examiner erred in finding the combination of Hershey and Fischer teaches that the verifier determines the authorization based at least in part on an assessment of the response times, and wherein the assessment of whether the one or more responses were

immediately available, or whether the one or more responses were a result of a determination. Therefore, we find that Appellant has not met the burden of showing the Examiner erred in rejecting claim 6 as obvious over Hershey and Fischer.

### DECISION

The Examiner's rejection of claim 4 under 35 U.S.C. § 103(a) as being obvious over Candelore, Honda and Fischer is affirmed.

The Examiner's rejection of claim 5 under 35 U.S.C. § 103(a) as being obvious over Candelore, Honda, Fischer, and Dillenberger is affirmed.

The Examiner's rejection of claims 7 and 9 under 35 U.S.C. § 103(a) as being obvious over Serret-Avila, Honda, and Hershey is affirmed.

The Examiner's rejection of claims 6 under 35 U.S.C. § 103(a) as being obvious over Hershey and Fischer is affirmed.

The Examiner's rejection of claim 8 under 35 U.S.C. § 103(a) as being obvious over Serret-Avila, Honda, Hershey and Vered is affirmed.

The Examiner's rejection of claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Serret-Avila, Honda, Hershey and van Zoest is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2009).

### AFFIRMED

nhl

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